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Attorney for Defendant NATIONAL MEDICAL SERVICES, INC., D/B/A NMS LABS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH WILSON,
Plaintiff,
vs.
COMPASS VISION, INC., et al.,
Defendants.

Case No. 3:07-cv-03431 BZ

**DEFENDANT NATIONAL
MEDICAL SERVICES, INC.,
D/B/A NMS LABS' INITIAL
DISCLOSURES PURSUANT TO
F.R.C.P. 26**

**DEFENDANT NMS LABS' INITIAL DISCLOSURES PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 26(a)(1)**

Defendant National Medical Services, Inc. dba NMS Labs ("NMS Labs") hereby submits its initial disclosures in accordance with Rule 26(a)(1) of the Federal Rules of Civil Procedure. NMS Labs expressly reserves the right to supplement and/or amend these disclosures as appropriate during the course of this action.

Rule 26(a)(1)(A) WITNESSES

The following individuals may have discoverable information that NMS Labs may use to support its claims and defenses.

1. Eric F. Rieders, Ph.D.
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

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Subject of information: The scientific accuracy of the EtG level testing(s) at issue, the basis for the established reporting limits and reliability of any reporting provided by NMS Labs regarding such testing.

2. Steven A. Noel, Ph.D.
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

Subject of information: The scientific accuracy of the EtG level testing(s) at issue, the basis for the established reporting limits and reliability of any reporting provided by NMS Labs regarding such testing.

3. G. John DiGregorio, M.D., Ph.D.
Frederic Rieders Family Renaissance Foundation
2300 Stratford Avenue
Willow Grove, PA 19090
215-784-9281

Subject of information: The scientific accuracy of the EtG level testing(s) at issue, the basis for the established reporting limits and reliability of any reporting provided by NMS Labs regarding such testing.

4. Shelly H. Carolan, MBA
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

Subject of information: Communications between NMS Labs and Compass Vision as well as other third party administrators, concerning the propriety and reliability of EtG testing.

5. Gregory E. Skipper, M.D.
19 S Jackson Street
Montgomery, Alabama 36104
(334) 954-2596

Subject of information: Efficacy of EtG testing and related issues.

6. Anthony G. Constantino, Ph.D.
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

Subject of information: Testing performed by NMS or related companies to determine efficacy of EtG testing and establish appropriate “cut off” limits.

7. Robert Middleberg, Ph.D.
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

Subject of information: Drs. Robert Middleberg and Edward Barbieri were involved in determining the “cut off” level for a “positive” EtG test.

8. Edward Barbieri, Ph.D.
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
215-366-1227

Subject of information: Drs. Robert Middleberg and Edward Barbieri were involved in determining the “cut off” level for a “positive” EtG test.

9. Patricia Haneman
NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
215-366-1284

Subject of information: Advertising and promotion of EtG Testing.

10. Deborah Wilson – Plaintiff
11. Kim McKown, President of Compass Vision

Subject of information: Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff’s Complaint and, specifically, on the subject of Compass Vision’s scope of services pursuant to its agreements with Maximus, Inc.; the roles of Maximus, Inc. and the California Board of Registered Nursing (“the

Board”) related to the institution and use of EtG testing for nurses in the Board’s Diversion Program; and the scope of services provided by National Medical Services (“NMS.”)

12. Martha Brown, M.D.
University of South Florida; Department of Psychiatry and Behavioral
Medicine; 3515 E. Fletcher Avenue; Tampa, Florida 33613 (813) 974-2575.

Subject of information: Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff’s Complaint and, specifically, the nature and scope of services provided by a Medical Review Officer versus medical consultants retained by Maximus, Inc. and/or the Board.

13. Sonia Menenberg.
Address currently unknown.

Subject of information: Former Maximus Program Director for the California Diversion Program. Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff’s Complaint and, specifically, on the subjects of Maximus’ role as administrator of the Board’s Diversion Program and the Board’s and/or Maximus’ decision to implement EtG testing.

14. Robert G. Britton
Senior Vice President, Maximus, Inc.
3130 Kilgore Road, Suite 100, Rancho Cordova, CA 95670,
(916) 364-6610.

Subject of information: Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff’s Complaint and, specifically, on the subject of the scope and limitations of Compass Vision’s services pursuant to contracts with Maximus.

15. Ruth Ann Terry.
Address currently unknown.
Board of Nursing Executive Officer.

Subject of information: Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff’s Complaint and, specifically, the Board of Nursing’s decision to include EtG on test panels of participants in the Diversion Program and factors taken into consideration regarding disciplinary action of nurses participating in the Program.

16. Carol Stanford.
Address currently unknown.
Board of Nursing Executive Officer.

Subject of information: Knowledge regarding the facts and circumstances that relate to the allegations in Plaintiff's Complaint and, specifically, the Board of Nursing's decision to include EtG on test panels of participants in the Diversion Program and factors taken into consideration regarding disciplinary action of nurses participating in the Program.

17. Maximus Case Managers and Medical Review Officers involved with Plaintiff's participation in the Diversion Program and/or disciplinary action. Identities are currently unknown to NMS Labs.

18. Medical directors and/or consultants for Maximus and/or the Board responsible for interpreting Plaintiff's test results in issue. Identities are currently unknown to NMS Labs.

19. Individuals associated with NWT/Labone/Quest Diagnostics, Inc. Knowledge regarding the use, reliability, and representations regarding EtG testing and the scientific accuracy of EtG testing levels. Identities are currently unknown to NMS Labs.

20. Medical doctors, psychiatrists, psychologists, counselors, field monitors and/or nurse support group facilitators who have knowledge of Plaintiff's condition during relevant times pled in the Complaint. Identities are currently unknown to NMS Labs.

21. Plaintiff's employers during relevant times pled in the Complaint. Identities are currently unknown to NMS Labs.

NMS Labs reserves the right to call as witnesses persons disclosed by other parties to this action or identified in the documents disclosed and produced by the parties in this action as its review and analysis of such documents takes place.

Rule 26(a)(1)(B) DOCUMENTS

1. Marketing Literature and Communications pertaining to EtG Testing.

Location: NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

2. Laboratory testing results, analytical data, quality control data and sample history results for testing of EtG levels in plaintiff's urine.

Location: NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

3. Plaintiff's Clinical Records

Location: Believed to be in possession of Compass Vision or TPA

4. Documents pertaining to the investigation of or actual evidence of substance abuse by the plaintiff

Location: Believed to be in plaintiff's possession, matter of public record or with the State Board

5. Disciplinary Orders and Records pertaining to License Suspension/Revocation Proceedings by the Board of Registered Nurses

Location: Believed to be in plaintiff's possession, matter of public record or with the State Board

6. Records pertaining to any Criminal Proceedings involving the Plaintiff

Location: Believed to be in plaintiff's possession or matter of public record

7. Documents pertaining to the scientific reliability of EtG testing

Location: NMS Labs
3701 Welsh Road
Willow Grove, PA 19090
(215) 657-4900

8. Documents pertaining to the studies and analysis of EtG levels through various exposures to ethanol and ethanol based products, including but not necessarily limited to the NMS EtG Study, June 2004 and attached documents.

Location: NMS Labs
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9. Plaintiff's diversion file, including medical and/or psychological records, case notes, progress notes, Diversion Evaluation Committee notes, communication with the DEC consultant, nurse facilitator reports, sponsor reports, treatment provider reports, laboratory test results and disciplinary orders.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board.

10. Investigative records maintained by the California Board of Registered Nursing pertaining to Plaintiff.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board.

11. Presentation materials from 2004 annual meeting of Federation of State Physician Health Programs.

Location: This is a public record equally available to Plaintiff.

12. Maximus proposal responding to the California State Department of Consumer Affairs Diversion Program RFP #7467-01-02.

Location: This is a public record equally available to Plaintiff.

13. Maximus, Inc.'s contract with California State Department of Consumer Affairs related to the Department's Diversion Program.

Location: This is a public record, equally available to Plaintiff.

14. Documents related to the Nursing Board's and/or Maximus, Inc.'s decision to include EtG on the test panel for participants of the Diversion Program.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board

15. *Drug Screening as a Regulatory Tool*, National Council of State Boards of Nursing.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board

16. State of California Department of Consumer Affairs Board of Registered Nursing Minutes related to EtG testing.

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Location; Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board

17. National Council of State Boards of Nursing Discipline and Investigative Resources related to EtG testing.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board

19. Federal guidelines defining the role of a Medical Review Officer.

Location: Defendant has not yet obtained these documents. Believed to be in Plaintiff's possession, a matter of public record, or maintained by the State Board

Rule 26(a)(1)(C) DAMAGES

Defendant NMS Labs does not contend that it sustained any damages in this action. It further denies that its conduct caused any damage to the plaintiff. It has not filed any cross-complaints in this action but reserves its right to do so should evidence gathered in discovery support such a cross-complaint.

Rule 26(a)(1)(D) INSURANCE

NMS Labs will provide Plaintiff with a copy of the following insurance agreement: Columbia Casualty Company, Policy No.: HMA 2047964737

Respectfully submitted,

**NATIONAL MEDICAL SERVICES, INC.
d/b/a NMS LABS,**

By its attorneys,

/S/ CHRISTIAN B. GREEN

Christian B. Green (SBN#173502)
LAW OFFICE OF SAMUEL GRADER
1860 Howe Avenue, Suite 350
Sacramento, CA 95825

CERTIFICATE OF SERVICE

Matter: Wilson v. Compass Vision, Inc.

United States District Court, Northern District Case No.: 3:07-cv-03431 BZ

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of the Law Offices of Samuel G. Grader and my business address is 1860 Howe Avenue, Suite 350, Sacramento, California 95825. On this date, I served the following documents:

National Medical Services, Inc., D/B/A NMS Lab's Initial Disclosures Pursuant to F.R.C.P. 26

_____ by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid. I am readily familiar with our firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service at Sacramento, California, on the same day in the ordinary course of business. Said correspondence was addressed as set forth below.

XX by having a true copy of the documents listed above transmitted via email to the names, addresses via the US District Court, Northern District website.

_____ by causing personal delivery of a copy thereof to the person or the office of the person at the address listed below.

Attorney for Plaintiff Joshua A. Ridless Paul A. Moore, III Law Offices of Joshua A. Ridless 244 California Street, Suite 300 San Francisco, CA 94111 Tel: 415-614-2600 Fx: 415-480-1398	Attorney for Defendant Compass Vision, Inc. Catherine A. Salah Gordon & Rees LLP 275 Batter Street, Suite 2000 San Francisco, CA 94111 Tx: 415-986-5900 Fx: 415-986-8054 Email: csalah@gordonrees.com
Norman Perlberger Eliot H. Lewis Pomerantz Perlberger & Lewis 700 Stephen Girard Bldg Philadelphia, PA 19107 Tel: 215-569-8866	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 11, 2008**, at Sacramento, California.

//Deborah J. Weidle
Deborah J. Weidle